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13 Counsel for Defendant LONG

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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

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20 UNITED STATES OF AMERICA,
21 Plaintiff,
22
23 v.
24 SCOTT LONG,
25 Defendant.

Case No.: CR 21-0031 JSW

**SUPPLEMENT TO AMENDED
SENTENCING MEMORANDUM**

Court: Courtroom 1, 4th Floor
Hearing Date: June 29, 2021
Hearing Time: 10:30 a.m.

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28 Defendant Scott Long filed an amended sentencing memorandum on June 22, 2021 ("Amended
29 Memo") in which he asked the Court to sentence him in accordance with the parties' agreement but
30 objected to proposed conditions of supervised release 5, 6 and 7, contained in the PSR as being
31 overbroad, and requested that the Court modify the conditions consistent with U.S.C. § 3583(d) and
32 Ninth Circuit precedent. *See* Amended Memo at p. 7-16. In support of these arguments, Mr. Long
33 attached (1) the Computer and Internet Monitoring Program (CIMP) Participant Agreement (Exhibit
34 A); (2) the CIMP Computer & Internet Acceptable Use Contract (Exhibit B); and (3) Order Revising
35 Standard Conditions of Release Related to Computer and Internet Use for Child Pornography
36 Offenders in *United States v. Carter*, 3:20-cr-00253-VC, dkt. 52 (Order) (Exhibit C).

1 Subsequent to filing the Amended Memo, United States Probation Officer (USPO) Kyle Pollak
 2 provided undersigned counsel with a newly revised participant agreement/acceptable use contract
 3 (“Revised Participant/Acceptable Use Contract”), attached to this Supplement to Amended
 4 Sentencing Memorandum as Exhibit D. According to USPO Pollak, following Judge Chhabria’s
 5 order in *United States v. Carter*, 3:20-cr-00253-VC, dkt. 52 (“Carter Order”), the probation office
 6 took a close look at the two contracts attached to the Amended Memo as Exhibits A and B, and
 7 combined them into the one revised contract. *See Exhibit D.*

8 Upon learning of the Revised Participant/Acceptable Use Contract, undersigned counsel met
 9 and conferred with both the probation officer and Assistant United States Attorney Samantha Bennett
 10 regarding proposed conditions 5, 6 and 7 set out in the PSR. AUSA Bennett and undersigned counsel
 11 agree to recommend that the Court combine conditions 5 and 6 to read as they do in the Carter Order:

12 You must enroll in the Computer Internet Monitoring Program (CIMP)
 13 and abide by the requirements of the CIMP Participation Agreement [now
 14 called the CIMP Participant Agreement and Acceptable Use Contract].
 15 You may not use or possess any computer that is not subject to the CIMP
 16 without prior permission of the probation officer. For purposes of these
 17 conditions of supervised release and your participation in CIMP,
 18 “computer” means any electronic device capable of accessing or storing
 19 images or video.

20 *See Carter Order at p. 3.* The proposed language above mirrors the language in the Carter Order
 21 with the exception that the CIMP Participation Agreement is now a combined document called the
 22 CIMP Participation and Acceptable Use Contract. Undersigned has no objection to the proposed
 23 condition approved by Judge Chhabria being imposed in place of proposed conditions 5 and 6.

24 Regarding proposed condition 7, undersigned counsel agrees with the modifications that Judge
 25 Chhabria provided in the Carter Order and requests that this Court impose the same language.
 26 Specifically, undersigned counsel requests that condition 7 be modified to read:

27 As directed by the probation officer, you must warn your employer of any
 28 restrictions on your computer use.

29 *See Carter Order at p. 4.* Meanwhile, AUSA Bennett has indicated that the government’s
 30 position remains the same as it has been stated in the government’s sentencing memorandum.

31 USPO Pollak has indicated to counsel that he will continue to recommend the three conditions
 32 as written in the PSR. However, the probation officer stated he does not have a strong objection to the

1 wording of Judge Chhabria's conditions if that is the direction that this Court decides to follow.

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3 Dated: June 24, 2021

4 Respectfully submitted,

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7 GEOFFREY A. HANSEN
8 Acting Federal Public Defender
9 Northern District of California

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JOYCE LEAVITT
Assistant Federal Public Defender

EXHIBIT D

**EXHIBITS IN SUPPORT OF
SUPPLEMENT TO AMENDED
SENTENCING MEMORANDUM**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA
PROBATION OFFICE

ANTHONY CASTELLANO
CHIEF U.S. PROBATION OFFICER



AMY RIZOR
ASST. DEPUTY CHIEF U.S. PROBATION OFFICER

CHRIS CARRUBBA-KATZ
ASST. DEPUTY CHIEF U.S. PROBATION OFFICER

Date: _____

**Computer & Internet Management/Monitoring Program
PARTICIPANT AGREEMENT and ACCEPTABLE USE CONTRACT**

Pursuant to the special condition of Probation, Parole, Mandatory Release or Supervised Release requiring the Probation Office to monitor my computer and/or Internet activity, I, Client's Name have been placed in the Computer & Internet Management/Monitoring Program (CIMP) and agree to adhere to the following directives as indicated:

- 1) I will adhere to the Participant Agreement and Computer & Internet Acceptable Use contract signed on _____, if applicable.
- 2) I agree to pay any cost of monitoring:
 - **\$33.00 monthly (online):** You may set up one-time or recurring subscription payments at <http://www.paycomputermonitoring.com/>
 - **\$36.00 monthly (manual):** Payments are to be made payable (money order, certified check) to NCPTC and mailed by the 15th of each month to **NCPTC P.O. Box 60144, King of Prussia, PA 19406**. (A service fee of \$3.00 is added to payments made by mail. First and last months' payments are due at the time of enrollment.)

You must indicate your PCM-ID: _____ and case number _____ on your payments.

- 3) I may be limited to the possession and use of one Internet-capable device, and I understand I must shut down any monitored computer system when not in use.
- 4) I understand I will read and send email using email applications that are compatible with any software and/or hardware used by the CIMP.
- 5) I understand the Probation Office will use telephone calls, personal visits, monitoring software/hardware, periodic examinations, and biometric user authentication to monitor my compliance.
- 6) I understand I am only permitted to use authorized Internet-capable devices, including security applications (i.e., anti-virus software), that are compatible with any software and/or hardware used by the CIMP. You are required to and/or will permit the Probation Office to make any directed modifications to your computer and/or Internet-capable device in order to make your device compatible with the CIMP.

- 7) I will allow the monitoring software/hardware and biometric user authentication hardware/software to be installed on computer and/or Internet-capable device as per the special condition.
- 8) I agree not to attempt to remove, tamper with, reverse engineer, and/or circumvent the computer monitoring software/hardware and/or biometric user authentication hardware/software. The hard drive may be secured with tamper-evident physical controls.
- 9) I agree to allow authorized personnel to inspect, maintain and troubleshoot the software/hardware installed on my computer system(s) and/or Internet-capable device, which may include surrender of my computer and/or Internet-capable device for periodic inspection with or without advance notice.
- 10) I understand that I am responsible for any software/hardware installed on my computer system and/or Internet-capable device and will be held responsible for any damage caused to the software/hardware.

Pursuant to your enrollment in the Probation Office Computer & Internet Management/Monitoring Program (CIMP), you are to adhere to the following computer/Internet-specific directives:

- 1) You must inform the probation office of all internet-capable devices in your home. Any unauthorized computer in your home is contraband and subject to seizure and additional search as determined by the probation office.
- 2) Access to any of the following services may occur only on a monitored computer: auction sites, social networking websites, email accounts, personal or business websites (including blogs), video-conferencing services, chat rooms or other online environments allowing for real-time interaction with others, website message boards, and newsgroups.
- 3) You must not have another individual access an Internet-capable device and/or Internet content on your behalf, which you are restricted from accessing yourself, without the permission of the Probation Office (“Internet use by proxy”). This includes, but is not limited to, uploading/downloading Internet content, accessing your email account and sending/receiving email.
- 4) All repairs to your authorized Internet-capable device must be approved by the Probation Office. Repairs must be done by an approved repair provider. Documentation indicating repairs done and reason for repairs must be obtained and submitted to your probation officer. Your authorized Internet-capable device may be subject to examination by the Probation Office prior to and after repair.
- 5) Online pornography is prohibited unless specifically approved by your probation officer. “Pornography” means “any materials with depictions of sexually explicit conduct, as defined by 18 U.S.C. § 2256(2).”
- 6) You must not engage in bulk emailing, spamming or email bombing.

- 7) You must not download, possess and/or install copyrighted material, which includes but is not limited to protected audio files, video files, software applications, etc., that you did not legitimately purchase or obtain the rights to utilize. You must not download, possess and/or install any application which allows for the circumvention and/or decryption of copyright protection measures.
- 8) You must not purchase, download, possess, and/or install freeware/shareware/software applications whose primary purpose is to scan and detect vulnerabilities in computer networks; to cause damage to other computer systems (i.e. viruses, worms); and/or covertly install remote connection/back door applications not authorized by users of other computer systems (i.e. Trojan Horses (NetBus, Back Orifice)). This includes, but is not limited to, spoofing/defacing web sites, how to launch denial of service attacks, how to gain unauthorized access to information maintained by corporate, government, education, etc. computer systems. You must not use any freeware/shareware/software application or other device which wipes (secure file deletion) disk space, drives, etc. unless approved by the Probation Office.
- 9) You must not utilize any application and/or service which permits file sharing, and/or other similar conduct (i.e. BitTorrent, Limewire, IRC F-Serves, etc.) without the permission of your probation officer. “Cloud” based file storage/sharing websites are prohibited unless approved by and documented by your probation officer.
- 10) You must not use any software program, mobile application, or device designed to hide, alter or delete records/logs of your computer use, Internet activities or the files stored on your assigned device(s). This includes the use of anonymizers, steganography, file erasing, file shredding, secure file deletion and cache/cookie removal software.
- 11) You must not change, re-install or upgrade the Internet-capable device operating system (i.e. Windows, Android, etc.) on any authorized device without approval of the Probation Office. This includes but is not limited to utilizing the "system restore" or "reset" function available in some operating systems. Automatic updates and security upgrades that are "pushed out" by operating system, or software companies (e.g. Java, Microsoft, Android etc.) are not prohibited and are encouraged to protect your computer. However, any update that interferes with the monitoring software will need to be removed and your officer will contact you with instructions. The Probation Office may alter the BIOS of your computer to prevent booting from uninstalled operating systems.
- 12) You must notify all parties who reside in your residence of these restrictions. You shall further inform any individual who may access your authorized computer(s) and/or Internet-capable device that all information contained on the device is subject to monitoring and random searches.

**FAILURE TO COMPLY WITH ANY OF THE INSTRUCTIONS OF THIS CONTRACT
MAY RESULT IN TEMPORARY OR PERMANENT LOSS OF PERMISSION TO USE A
COMPUTER AND/OR ADVERSE ACTION INCLUDING REVOCATION OF
SUPERVISION.**

I acknowledge that I have received a copy of these rules and that they have been explained to me. I understand that I must comply with these rules until notified by the Probation Office. I further understand that any violation of these rules will also constitute a violation of supervision and may result in immediate adverse action.

CIMP Participant Client's Name

(Date)

U.S. Probation Officer Staff Name

(Date)